

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 1 of the Commission's Rules,	)	MD Docket No. 10-234
Concerning Practice and Procedure, Amendment	)	
of CORES Registration System	)	
	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: November 19, 2010**

**Released: December 7, 2010**

**Comment Date: [30 days after date of publication in the Federal Register]**

**Reply Comment Date: [45 days after date of publication in the Federal Register]**

By the Commission:

**I. INTRODUCTION**

1. This Notice of Proposed Rulemaking ("NPRM") proposes amending the Commission's rules to make revisions to the Commission's Registration System, also known as "CORES." Anyone doing business with the Commission is required to first obtain a unique identifying number through CORES called an FCC Registration Number, or "FRN."<sup>1</sup> Among other things, an FRN allows registrants to submit or file applications and remit payments to the Commission.<sup>2</sup> Our proposed changes to CORES would result in customer-related improvements, as well as improvements to the process by which entities and individuals access and make use of information that is contained in CORES. The proposed changes would affect rules governing Practice and Procedure (*see* 47 C.F.R. Part 1).

2. We are able to offer these proposed modifications to the current version of CORES based on our own experience with the system since its inception in 2000, as well as on informal suggestions that have been provided by CORES FRN holders themselves. We hope that comments received in this rulemaking will further add to and refine our efforts for improving the CORES system. In addition, we plan to invite the public to participate in a public forum at the FCC's headquarters in Washington, D.C. to

<sup>1</sup> In addition, the FCC requires the use of the FRN as a unique identifier for certain ownership reports that collect data about persons and entities holding attributable interests in various licenses. *See e.g., Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket Nos. 07-294, 06-121, 02-277, and 04-228, and MM Docket Nos. 01-235, 01-317, and 00-244, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5908, para. 21 (2009); *In re Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System In The Wireless Telecommunications Services*, WT Docket Nos. 98-20 and 96-188, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11488, para. 29 (1999). We note that, other than seeking comment on whether to expand the use of "special use" FRNs, this proceeding is not intended to reduce, modify or otherwise amend the current requirements for such individuals and entities to obtain an FRN from the Commission to report ownership interests. *See* paras. 38-39, *infra*.

<sup>2</sup> Application filers, licensees, certificate and permit holders and all entities and individuals sending remittance payments to the Commission are considered to be doing business with the Commission, and must therefore have an FRN obtained through CORES. In some cases, the Commission assigns an FRN to an entity or individual on its own through CORES.

discuss these proposed changes to CORES, and to give interested parties the opportunity to discuss their concerns and suggest further modifications. A public notice announcing the date of the forum will be released shortly. We invite parties to indicate their interest in participating in this public forum by contacting us through the information provided in Section IV.F., below.

3. This proceeding is part of the Commission's larger effort to reform and transform the agency into a model of excellence in government. Like the NPRMs on the FCC's *ex parte* rules and the one focused on the rules governing Commission practice and procedure,<sup>3</sup> this NPRM will reform FCC procedures, modifying CORES to make it easier for individuals<sup>4</sup> and entities<sup>5</sup> to do business with the FCC. In addition, this NPRM is related both to the Commission's new Core Financial System and the development and design of the FCC's new Consolidated Licensing System ("CLS").<sup>6</sup>

4. Our proposed modifications to CORES partly include: requiring entities and individuals to rely primarily upon a single FRN that may, at their discretion, be linked to subsidiary or associated accounts; allowing entities to identify multiple points of contact; eliminating some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number ("TIN")<sup>7</sup> at the time of registration; requiring FRN holders to provide their e-mail addresses; giving FRN holders the option to create a custom User ID; modifying CORES log-in procedures for entities so as to ease use by multiple individuals; adding attention flags and notices that would inform FRN holders of their financial standing before the Commission when logging onto CORES; and adding data fields to enable FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. These modifications, if implemented, will make CORES more feature-friendly and will eliminate some of the system's current limitations. They will also improve the Commission's ability to comply with various statutes that govern debt collection and the collection of personal information by the federal government.

## II. BACKGROUND

5. The Commission is required in a variety of contexts to manage and collect substantial sums of money, including annual regulatory fees and application fees<sup>8</sup> and civil monetary penalties.<sup>9</sup> The

<sup>3</sup> *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10-43, Notice of Proposed Rulemaking, 25 FCC Rcd 2403(2010); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44, Notice of Proposed Rulemaking, 25 FCC Rcd 2430 (2010). See also *FCC Proposes Rule Changes to Improve Decision-Making and Efficiency, Promote Participation in FCC Proceedings*, 2010 WL 589844 (rel. February 18, 2010) (news release announcing the commencement of the two previously-mentioned proceedings).

<sup>4</sup> The terms "individuals" and "persons" are used synonymously in this NPRM.

<sup>5</sup> An "entity" is any business or organization. This includes public or private, and profit or not-for-profit, organizations.

<sup>6</sup> *Federal Communications Commission (FCC) To Hold April 7, 2010 Workshop on Development of Consolidated Licensing System*, MD Docket No. 10-73, Public Notice, 25 FCC Rcd 3176 (2010). See also the Commission's web page on the effort to develop the consolidated licensing system, found at <http://reboot.fcc.gov/reform/systems/cls>.

<sup>7</sup> For individuals, the TIN is their social security number.

<sup>8</sup> See 47 U.S.C. § 159 and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09-65, Report and Order, 4 FCC Rcd 10301 (2009) (regulatory fees); 47 U.S.C. § 158 and *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1107 of the Commission's Rules*, GEN Docket No. 86-285, Order, 23 FCC Rcd 14192 (2008) (application fees).

<sup>9</sup> See, e.g., 47 U.S.C. § 503; 47 C.F.R. § 1.80; see also *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

Commission also auctions various licenses through competitive bidding and administers the collection of payments for these licenses.<sup>10</sup> In addition, the Commission directs the collection of mandated contributions to the Universal Service Fund (“USF”) and other statutory programs.<sup>11</sup>

6. In operating these programs, the Commission is subject to a variety of federal statutes designed to ensure that the Government’s financial management systems consistently and accurately report assets, liabilities, revenues and expenditures.<sup>12</sup> In particular, the Commission is subject to the Debt Collection Improvement Act of 1996 (“DCIA”), which sought to address Congressional concerns that debts owed to the Federal government were not being properly collected.<sup>13</sup>

7. To improve its collection activities, the Commission established an internal revenue management system that supports application and regulatory fee accounting, spectrum auction loan portfolio management, accounting for auction proceeds, accounting for enforcement actions, and other accounts receivable of the Commission. In developing this revenue management system, it became apparent that persons doing business with the Commission, as that term is defined by the DCIA,<sup>14</sup> were identified in various ways in our filing and licensing systems that made unified accounting and revenue management difficult. To address this problem, the Commission developed CORES.

8. CORES is a web-based, password-protected, registration system that assigns a unique 10-digit FRN to a registrant for use when doing business with the FCC. These FRNs are used by all Commission systems that handle financial, authorization of service, and enforcement activities, and enable our customers to be more easily identified as the filers of applications, reports, remittance payments and other documents with the FCC. CORES was designed to serve as a central standard repository for basic regulatee and licensee information, and to help the Commission more effectively forecast, assess and collect regulatory fees; track enforcement of fines and forfeiture actions; monitor and

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<sup>10</sup> See 47 U.S.C. § 309(j).

<sup>11</sup> See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

<sup>12</sup> See, e.g., 31 U.S.C. § 3512(b) (mandating the establishment and maintenance of systems of accounting and internal controls); 4 C.F.R. § 102.1(a) (requiring agencies to “take aggressive action, on a timely basis, to collect all claims of the United States”); 4 C.F.R. § 102.17 (requiring agencies to establish procedures to identify the causes of overpayments, delinquencies, and defaults, and the corrective actions needed).

<sup>13</sup> Pub. L. No. 104-134, 110 Stat. 1321 (1996), codified at 31 U.S.C. §§ 3701, *et seq.* See *United States v. Texas*, 507 U.S. 529, 536-37 (1993) (Debt Collection Act was passed “in order to strengthen the Government’s hand in collecting its debts”).

<sup>14</sup> The DCIA, 31 U.S.C. § 7701(c)(2), states that “a person shall be considered to be doing business with a federal agency if the person is —

- (A) a lender or servicer in a Federal guaranteed or insured loan program administered by the agency;
- (B) an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency;
- (C) a contractor of the agency;
- (D) assessed a fine, fee, royalty or penalty by the agency; and
- (E) in a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency.”

collect penalties; manage the grant of waivers and exemptions; and, provide information to the public.<sup>15</sup>

9. When CORES first became operational on July 19, 2000, the public was permitted to obtain FRNs to be used on Commission filings on a voluntary basis.<sup>16</sup> Then, by way of rulemaking effective December 3, 2001, the Commission established that FRNs were to be used on Commission filings on a mandatory basis.<sup>17</sup> Since then, in an effort to limit the unnecessary use of social security numbers in agency systems and programs, the Commission has expanded the use of FRNs to other purposes beyond compliance with the DCIA.<sup>18</sup> Now, based on several years of experience with CORES and the FRN registration process, we now wish to modify and enhance CORES to better serve the interests of the Commission and the public by identifying areas of improvement in the way customers interact with and make use of CORES, thus enabling us to improve the system's features and eliminate or reduce limitations of the system in its current state.

10. *Consolidated Licensing System.* Recently, the Commission announced its intent to develop and deploy an agency-wide Consolidated Licensing System ("CLS") in an effort to improve its spectrum management and to develop a transparent, easily accessible, data driven, efficient, cost-effective and green consolidated licensing system.<sup>19</sup> The CLS is expected to consolidate a number of licensing systems and databases currently used by the Commission's Bureaus and Offices, including the Antenna Structure Registration System ("ASR") (managed by the Commission's Wireless Telecommunications Bureau); the Cable Operations and Licensing System ("COALS") (managed by the Media Bureau); the Consolidated Database System ("CDBS") (managed by the Media Bureau); the Experimental Licensing System ("ELS") (managed by the Office of Engineering and Technology); the International Bureau Filing System ("IBFS") (managed by the International Bureau); and, the Universal Licensing System ("ULS") (managed by the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau). Among other things, the Consolidated Licensing System is expected to establish a single consolidated form for filing different types of license application, permit a single sign-on to all of the underlying Commission systems, and create an enhanced environment for accessing and searching Commission data. The present proceeding is viewed by the Commission as one necessary step of the overall development of the CLS.

### III. PROPOSED CHANGES TO CORES

11. In the discussion that follows, we seek comment on specific modifications proposed for CORES. As described above, one of the primary goals of this proceeding is to improve the customer interface with CORES so that customers can use the system in a more efficient and effective manner. To

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<sup>15</sup> See *Office of the Managing Director Implements the FCC Registration Number (FRN) and Commission Registration System (CORES) Registration Process Effective March 27, 2000*, DA 00-407, Public Notice, 15 FCC Rcd 16427 (2000).

<sup>16</sup> See *New Commission Registration System (CORES) to be Implemented July 19*, DA 00-1596, Public Notice, 15 FCC Rcd 18754 (2000).

<sup>17</sup> See *Amendments of Parts 1, 21, 61, 73, 74 and 76 of Commission's Rules, Adoption of Mandatory FCC Registration Number*, MD Docket No. 00-205, Report and Order, 16 FCC Rcd 16138 (2001) ("2001 CORES Order").

<sup>18</sup> See para. 1, *supra*. These additional uses for the FRN comport with a government-wide effort to safeguard personally identifiable information by reducing the unnecessary use of social security numbers and exploring alternatives to serve as a personal identifier for Federal programs. See, e.g., *Safeguarding Against and Responding to the Breach of Personally Identifiable Information*, OMB Memorandum M-07-16 (May 22, 2007).

<sup>19</sup> *Federal Communications Commission (FCC) To Hold April 7, 2010 Workshop on Development of Consolidated Licensing System*, MD Docket No. 10-73, Public Notice, 25 FCC Rcd 3176 (2010).

that end, we encourage commenters in this proceeding to address problems that they have experienced while navigating CORES and using their FRN(s) on subsequent remittance payments, filings and applications before the Commission. We ask that commenters recommend specific measures that we could take that would ease any such navigation and usage problems. Commenters should also propose measures that we could take to simplify the registration process, as well as measures that would enhance their ability to use the Commission's other automated systems, in light of the Commission's intent to develop an agency-wide consolidated licensing system, as described above.

**A. A Single FRN**

12. In the *2001 CORES Order*,<sup>20</sup> we concluded that requiring entities and individuals doing business with the Commission to obtain an FRN would "improve the management of our financial systems," and was "part of a long-range solution to better manage our financial systems."<sup>21</sup> Accordingly, we adopted a 10-digit unique identifier called the FRN, and chose CORES as the automated system for assigning FRNs to entities and individuals doing business with the Commission.

13. Since the creation of CORES, entities have been able to obtain multiple FRNs in order to permit different members of their corporate family to obtain their own individual FRNs, regardless of whether those entities had different taxpayer identification numbers ("TINs"),<sup>22</sup> and to allow entities to organize their dealings with the Commission along logical business lines.<sup>23</sup> As a result of this policy, however, it is difficult for the Commission to identify all the FRNs that are held by the same entity and tie them together in order to examine the entity's entire course of dealing with the agency. Although entities are required to provide their TIN during the FRN registration process, the data reported by entities has not always been consistent. In many cases a TIN has not been reported at all. For example, in some instances, due to exceptions allowed by the Commission, entities are not required to provide their TIN during the CORES registration process.<sup>24</sup> In other cases, entities have inappropriately selected a TIN exception reason during the CORES registration process that is not intended to apply to them, thereby circumventing the requirement that they provide a valid TIN.

14. That the Commission is unable to use CORES to electronically link all of an entity's valid FRNs has several consequences. First, it hinders the Commission's ability to fulfill its debt collection obligations under the DCIA. Second, it limits the effectiveness of the Red Light Display System<sup>25</sup> as (for example) it is used to review applications to participate in Commission auctions.<sup>26</sup> Third,

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<sup>20</sup> See *supra* n. 14.

<sup>21</sup> *2001 CORES Order*, 16 FCC Rcd at 16139, para. 3.

<sup>22</sup> A TIN is a unique identifier assigned to an entity for tax payment purposes. A TIN may either be a Social Security Number ("SSN") assigned to an individual by the Social Security Administration ("SSA"), or an employer identification number ("EIN") assigned to a business or organization by the Internal Revenue Service ("IRS").

<sup>23</sup> *2001 CORES Order*, 16 FCC Rcd at 16141, para. 12.

<sup>24</sup> Currently, entities are permitted to select from among six "exceptions" to the general requirement that they furnish a TIN during their CORES registration process, while individuals are allowed to select from four exception reasons. For example, foreign citizens and entities that do not maintain a business presence in the U.S. may be eligible to claim an exception to this requirement. Later in this NPRM, we propose to eliminate or otherwise modify some of our TIN exception reasons for CORES registrants.

<sup>25</sup> The Commission's Red Light Display System ("RLDS") enables entities and individuals doing business with the Commission to determine if they have any outstanding delinquent debt. When an entity/individual applying for or seeking benefits is delinquent in non-tax debts owed to the Commission, we are required by law to postpone action on applications and other requests until the outstanding debt is repaid. See [http://www.fcc.gov/debt\\_collection](http://www.fcc.gov/debt_collection). RLDS is electronically checked when electronic license applications are received by the Commission.



it inconveniences our licensing and enforcement bureaus, and even our licensees themselves, in their efforts to remember, recognize, and manage the various FRNs obtained throughout their course of business with the Commission.

15. After nearly a decade of experience with CORES, for these reasons expressed here, including our overarching effort to reform how the FCC interacts with the public and ongoing reform of the way the Commission collects and retains data, we tentatively conclude that it is in the best interest of all parties for the Commission to be able to view and search information on entities registered in CORES by a single unique identifier. The benefits of requiring entities to identify themselves in Commission filings and applications by a single unique identifier include administrative simplicity, enhanced search capability, and improved reliability of basic company data. In addition, limiting entities to a single FRN will enhance our ability to inform regulatees of financial and other administrative-related issues, such as past due regulatory fees and impending license renewal deadlines, through e-mail or on-line notification messages. In section III.K, below, we propose to institute a company-centric “dashboard” that filers would see upon login, through which the filer would have the ability to review the progress on their filings, fees that are due, the history of files the filer has submitted, as well as other important information the filer may need. Similarly, in section III.G, we propose to post warning flags to each entity’s CORES account indicating their status in the Commission’s Red Light Display System and their debarment status. Such features could only be made possible by limiting entities to a single company-wide identifier. We believe that the benefits of such notifications and an entity-wide license administration “center” far outweigh any potential burden. Therefore, we propose to limit entities and individuals registered in CORES to the use of a single FRN that incorporates subsidiary FRNs or sub-accounts, as described below.<sup>27</sup>

16. As an initial matter, we clarify that, for the purposes of this discussion, an entity shall be defined by the use of a single TIN. Thus, under the proposals described below, affiliated entities that are part of a larger corporate structure would not be limited to use of the same FRN if they have obtained separate TINs from the IRS.

17. Although we propose to permit only a single FRN per entity, we tentatively conclude that entities should nevertheless retain the ability to organize their filings and other dealings with the

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<sup>26</sup> The FCC’s auction short-form application requires applicants to certify under penalty of perjury that they, their affiliates, their controlling interests, and the affiliates of their controlling interests, as defined by Section 1.2110 of the Commission’s rules, are not in default on any payments for Commission licenses (including down payments), and that they are not delinquent on any non-tax debt owed to any Federal agency. *See* 47 C.F.R. §§ 1.2105(a)(2)(x), 1.2105(b)(1), and 1.2110; *see also Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293, 15317 para. 42 and n.142 (“If any one of an applicant’s controlling interests or their affiliates . . . is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) . . . and will not be eligible to participate in Commission auctions.”). Absent linked FRNs, every FRN of each relevant entity must be reviewed separately in RLDS. The inability to easily and simply link multiple FRNs therefore limits the ability of auction participants and the Commission to use the RLDS to determine whether an auction applicant complies with the Commission’s competitive bidding rules.

<sup>27</sup> In theory, this proposal only needs to apply to entities. However, in practice, we seek to apply it to individuals as well. CORES is populated with many instances in which individuals hold multiple FRNs. These instances are most likely the result of individuals who have forgotten their FRNs or FRN passwords over the course of time and who then chose to electronically register for another FRN, instead of resetting their original password with the assistance of our Customer Support Help Desk.

Commission among logical business lines of their choosing. This particularly applies to larger businesses and organizations that do business with the Commission through various sources, business operations, etc., and therefore would prefer to have several registrants associated with their single FRN.

18. There is any number of possible methods that could be implemented to limit entities to the use of a single FRN in CORES while still affording them the ability to establish multiple registrants within that FRN. One such option would be to modify the structure of existing FRNs to incorporate an alpha-numeric suffix that would allow entities to populate a single FRN with sub-accounts for additional registrants. Under this proposal, which we shall refer to as “Option 1,” an entity would be permitted to utilize a single ten-digit FRN for all of its dealings with the FCC, but would have the ability to create an unlimited number of sub-accounts that could be assigned to organizational units, such as a geographic district served by the entity or a distinct line of business conducted by the entity, or even to particular employees. These sub-accounts would be distinguished by a unique multi-character suffix that would trail the entity’s single ten-digit FRN. For example, under Option 1, an entity with the single FRN 1234-5678-90 may decide to establish three sub-accounts within its FRN: one for Jane Q. Smith (perhaps expressed 1234-5678-90-JQS), one for its West Coast Operations (perhaps expressed 1234-5678-90-WCO), and one for Broadcast License WXYZ (perhaps expressed 1234-5678-90-XYZ). These suffixes would not be limited to letters; an entity could just as easily create a sub-account expressed with a purely numeric extension, such as 1234-5678-90-001. Alternatively, the Commission could automatically generate numeric suffixes for each sub-account (that is, -001, -002, -003, etc.), while providing entities with the option to subsequently customize these suffixes as it sees fit. Thus, this proposal would require each entity to surrender all but one of its ten-digit FRNs, which would serve as the foundation of all of its future sub-accounts. Under this proposal, entities would have the ability to create and use additional sub-accounts within their single FRN according to their business and administrative needs. We seek comment on this proposal, along with the alternative outlined above. If adopted, should entities have the ability to choose which of their existing FRNs would serve as the ten-digit FRN core? If so, how much time should entities have to make such a selection? Commenters should consider any potential burden that may be incurred through the adoption of these options.

19. Another proposal, which we shall refer to as “Option 2,” would enable entities that currently hold multiple FRNs to retain all of their various FRNs, which would be electronically linked to each other through the assignment of an identical prefix that would precede each of the entity’s ten-digit FRNs. It would not be necessary for the user to input this prefix; the system would automatically access and attach the appropriate prefix whenever one of an entity’s assigned FRNs was used. Although the prefix would be visible to the entity, it would only be used for internal purposes by the Commission to link all of an entity’s FRNs for the purposes identified above. Thus, under Option 2, entities will be able to retain all of their current FRNs, and would not be required to re-register in CORES, reducing the potential burden on both regulated entities and the Commission, especially in the wake of future mergers and acquisitions among different entities that currently hold an FRN in CORES. We seek comment on this option, as well as on any other proposal for limiting entities to a single FRN, such as requiring entities to manually select one of their existing FRNs to serve as their “primary” FRN, while their remaining FRNs would be automatically converted to subsidiary, or sub-FRNs, which would be electronically linked to its primary FRN.

20. In addition, we seek comment on whether we should also allow an FRN registered to an individual to have sub-accounts in much the same way as business entities under either option outlined above, or whether individuals should be prohibited from utilizing sub-accounts or sub-FRNs. For example, individuals may find it beneficial to create sub-FRNs for use by outside attorneys or consultants. We encourage commenters to provide examples of where an individual’s business needs at the Commission would benefit from being able to populate sub-accounts to their FRN.

21. Our current process for how entities and individuals obtain an FRN from CORES

requires that only a single registrant may be associated with each FRN. However, any proposal to limit entities to the use of a single FRN—regardless of the approach that is eventually adopted—needs to address the need for multiple individuals to utilize the same FRN. This need is especially evident for most businesses and organizations, but it may apply to some individuals as well. We seek comment generally on if (and, if so, how) entities and individuals will wish to wield administrative access rights and authority for their single FRN, or for multiple FRNs that are electronically linked to each other. Should CORES allow multiple individuals to be able to register with and access a single FRN with their own unique user name and password? Or rather, should CORES adopt a new feature in which the FRN has a “primary registrant” that is granted exclusive administrative access and authority for adding subsequent registrants to the FRN and allowing registrant access to the FRN? We seek comment on the administrative burden of having a primary registrant. Should individuals with administrative rights to an entity’s primary FRN have rights to alter any data contained in any of the entity’s sub-FRNs? Why or why not? What about the reverse: Should individuals with administrative rights to a particular sub-FRN be restricted from altering data in the primary or another sub-FRN? With any approach taken, the Commission can provide user-driven options for such actions as disabling an FRN’s sub-account feature or otherwise managing how subsequent registrants are added to a single FRN. We seek comment on these thoughts, as well as on other administrative access and authority concerns.

22. In the event that we adopt a process for limiting entities and individuals to a single FRN (as opposed to Option Two, above, which would simply assign an identical alpha-numeric prefix to existing FRNs held by a particular entity), we seek comment on the manner in which previously-registered entities and individuals should migrate to their single FRN. How and when should a single FRN for each entity/individual be established? Should the Commission issue a newly assigned FRN to each entity/individual? Should entities and individuals with two or more FRNs currently registered in CORES be permitted to select which single FRN they will use on a going forward basis (while the Commission de-activates the entity’s remaining unselected FRNs), or should they simply be assigned the most recent one they have used? We seek comment on whether previously-registered entities and individuals with a single FRN should simply keep their existing FRN, and not migrate to a newly assigned number.

23. Finally, we invite parties to offer other approaches for data migration within CORES. In addition, we seek comment on whether the migration to a single FRN should occur automatically—and if so, under what criteria—or whether entities and individuals should be required to actively interface with CORES to establish their single FRN. If we adopt a scenario where previously-registered entities and individuals are to interface with CORES to establish a single FRN, should registrants be required to complete the process within a particular time frame after the effective date of the rules adopted in this proceeding before all of their FRNs are automatically deactivated? What should that time frame be?

24. As mentioned above, we plan to invite the public to participate in a public forum at the FCC’s headquarters in Washington, D.C. to discuss our various proposals to limit entities and individuals to a single FRN. All interested parties will have the opportunity to discuss their concerns and to suggest other solutions that would accomplish the goals outlined here with a minimal amount of disruption on the industry. A public notice announcing the date of the forum will be released shortly. We invite parties to indicate their interest in participating in this public forum by contacting us through the information provided in Section IV.F., below.

## **B. Multiple Registrants with Multiple Points of Contact**

25. Currently, CORES does not permit FRN holders to identify anyone other than themselves as the sole point of contact for their FRN. Such contact information is often used by the Commission to contact entities and individuals to collect delinquent debt or resolve remittance issues that may arise during their course of dealing with the agency. We have come to believe that the inability of FRN holders



to identify additional points of contact for their FRN unnecessarily limits the FRN's usefulness to the FRN holder, as well as to the Commission. Because the sole point of contact attributed to the FRN is not always the appropriate individual to resolve a particular issue or to provide necessary information, it is not uncommon for delays to occur while the appropriate contact is established. For this reason, we tentatively conclude that FRN holders should have the ability to voluntarily provide additional points of contact for their FRNs, as well as for each sub-account or sub-FRN as the case may be. We seek comment on this conclusion.

26. We propose that FRN registrants would be permitted to voluntarily provide point of contact information for certain specific, pre-designated functions, such as "Accounting," "Billing," "Licensing," "Legal Issues," etc. Points of contact provided by an FRN holder would not become registrants to the FRN, and therefore would not be able to gain access to confidential data submitted by the entity to CORES. They would simply be static points of contact that have been established by one of the FRN's registrants to address particular issues or subject matter as needed. We seek comment on this proposal. Also, in addition to the functions listed above, what other pre-designated subject matter categories should be made available for an FRN registrant to select when identifying individuals that will serve as points of contact? Should FRN holders have the ability to create their own categories of uses for contacts that they provide, or should they be limited to a menu of pre-designated functions offered by the Commission? We seek comment on these questions.

27. Finally, we seek comment on whether we should extend this proposal for multiple points of contact to FRN holders who are individuals. Under what circumstances and to what extent may individuals desire to identify multiple points of contact to be associated with their FRN? Should individuals have the same range of choices as entities for points of contact? In what ways, if any, should the point of contact options for individuals differ from those for entities?

### C. Elimination of Certain TIN Exception Reasons

28. *Foreign Entities and Non-United States Citizens.* As noted above, if you are doing business with the Commission, you need to register for an FRN.<sup>28</sup> This includes foreign registrants and non-United States citizens who are generally required to provide their TIN before completing the CORES registration process. In some instances, foreign entities do not have a taxpayer identification number. Since the inception of CORES, the Commission has permitted foreign entities and individuals to decline to provide their TIN in certain circumstances. With regard to foreign entities, the prevailing logic was that such businesses and organizations are not required to obtain an employer identification number ("EIN") from the Internal Revenue Service ("IRS"), and are thus unable to furnish a TIN during their CORES registration process. Therefore, we have historically allowed such entities to complete the CORES registration process without providing a valid TIN.<sup>29</sup> Similarly, because individuals who are not U.S. citizens and who are not employed within the United States typically are not issued a social security number ("SSN") by the U.S. Social Security Administration ("SSA"), we have previously permitted individuals to complete the CORES registration process without providing a valid TIN by certifying that they have not been issued a SSN because they are not U.S. citizens.

29. As originally crafted, our TIN exception reason for foreign entities failed to recognize that foreign entities operating inside the U.S., or who have employees working in the United States, are

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<sup>28</sup> See n.2, *supra*.

<sup>29</sup> See 2001 CORES Order, 16 FCC Rcd at 16142, para. 18. See also the Frequently Asked Questions section on the Commission's CORES website, <https://fjallfoss.fcc.gov/coreWeb/html/tin.html#q52>, "What if my entity does not have a TIN?"

required to obtain an EIN from the IRS.<sup>30</sup> Thus, we tentatively conclude that foreign entities operating within the U.S. should now be required to provide their EIN when seeking to obtain an FRN through CORES. We seek comment on this conclusion. With regard to foreign entities that do not operate in the United States nor have employees in the United States, we wish to operate from the assumption that they may still be able to provide some form of equivalent tax identification number issued by their respective home government. We seek comment on the validity of our assumption and request that commenters provide specific examples of developed countries whose governments do not employ any concept of a TIN for their businesses and organizations. Should we determine that our assumption is accurate (*i.e.*, that the use of taxpayer identification numbers is a near-universal concept), we would eliminate our taxpayer identification number exception reason for all businesses and organizations and require such entities to furnish their country's equivalent taxpayer identification number as issued by their home government. To distinguish foreign equivalent taxpayer identification numbers from IRS-issued EINs in CORES, we propose that all foreign taxpayer identification numbers would receive a prefix consisting of their respective country's international two-character country code. To ensure that we are able to uniquely identify every entity that does business with the Commission and deter the intentional misuse of this exception by domestic businesses seeking to avoid reporting their correct EINs, should we require all foreign business and organizations to furnish the Commission with a copy of their country's taxpayer identification documentation at the time of registering an FRN in CORES? If so, what would be the most effective and least burdensome method for foreign entities to submit a copy of their country's taxpayer identification documentation? Moreover, we seek comment on whether foreign entities that are existing license holders should submit a copy of their country's taxpayer identification documentation.

30. Similarly, we propose to eliminate our TIN exception reason for foreign individuals. We note that foreign nationals working in the United States, including all individuals working in the United States on an immigrant visa, are issued an SSN by the SSA.<sup>31</sup> In addition, some temporary visitors, students, and workers on non-immigrant visas are allowed and sometimes required to obtain an SSN.<sup>32</sup> We therefore conclude that in the vast majority of cases, individuals should be able to furnish a valid SSN as issued by the SSA. We also note that there is another type of TIN that may be held by foreign individuals that CORES has never been programmed to accept. This TIN is known as an Individual Taxpayer Identification Number, or ITIN. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, an SSN from the SSA.<sup>33</sup> ITINs and SSNs share the same nine-digit 000-00-0000 data structure. Only non-U.S. citizens can apply for an ITIN.<sup>34</sup> We note that individuals who already have a valid SSN should not apply for an ITIN because it is not permissible for an individual to hold both an SSN and an ITIN.<sup>35</sup> We tentatively conclude that individuals should be permitted to use their ITIN in place of an SSN when applying for an FRN. We seek comment on this conclusion.

31. Furthermore, foreign individuals who are unable to furnish either an SSN or an ITIN as their TIN may still be able to provide some form of equivalent taxpayer identification number or general identification number that has been issued by his or her home government which the Commission could accept in place of an SSN or ITIN. We seek comment on this matter. We specifically seek examples of

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<sup>30</sup> See Internal Revenue Service Form SS-4 Application for Employer Identifier Number.

<sup>31</sup> See "Social Security Card Application Guide," <https://www.usimmigrationsupport.org/social-security-card.html>.

<sup>32</sup> *Id.*

<sup>33</sup> See <https://www.irs.gov/individuals/article/0,,id=96287,00.html>, Individual Taxpayer Identification Number (ITIN).

<sup>34</sup> See "ITIN Application," <https://www.usimmigrationsupport.org/itin.html>.

<sup>35</sup> *Id.*

developed countries whose governments do not assign taxpayer identification numbers or utilize a general identification system for their citizens. If used, we propose to identify foreign-issued tax identification numbers (or the equivalent) for individuals in CORES by adding a prefix that represents the individual's applicable international two-character country code. We seek comment on whether we should require supporting documentation to be furnished to the Commission at the time of registering an FRN. In particular, parties should indicate whether requiring the submission of foreign-equivalent taxpayer identification numbers and supporting documentation would help ensure that we are able to uniquely identify every individual that does business with the Commission, and would deter the intentional misuse of this exception by individuals seeking to avoid reporting their correct social security numbers or attempting to register simultaneously under multiple aliases. We seek comment on these potential measures, including the most effective and least burdensome method to submit such supporting documentation.

32. Finally, we seek comment on how the Commission should treat FRNs that were obtained by foreign entities and foreign individuals through the use of the previously-mentioned TIN exception reasons. Should these existing FRN holders be “grandfathered” into CORES, or should they be required to provide a valid SSN, ITIN, or foreign equivalent taxpayer identification number within a particular time frame? How long of a waiting period is appropriate to allow for previously registered foreign entities and foreign individuals to provide one of the aforementioned valid identifiers? If adopted, we tentatively conclude that affected entities and individuals would be electronically notified of the requirement that they provide a valid identifier upon logging in to the system. Thus, we tentatively conclude that foreign entities and foreign individuals must furnish their TIN or TIN-equivalent documentation within thirty days of their first log-in after the effective date of any final rules adopted in this proceeding. We seek comment on this conclusion.

33. *Petitioners and Non-Feeable Complainants.* Petitioners and non-feeable complainants are not required by Commission rules to provide their TIN to the Commission, nor to obtain an FRN,<sup>36</sup> under the rationale that non-feeable items do not involve payments to the Commission. When CORES was first developed, however, we understood that some of these same petitioners and non-feeable complainants may voluntarily wish to obtain an FRN, possibly for internal record-keeping purposes. Thus, to reduce the regulatory burden on such entities, we established an exception permitting entities and individuals to obtain an FRN without providing their TIN by certifying during the registration process either that “the individual is a petitioner” or “the entity (business or organization) is a petitioner.” However, our experience since then has underscored that this particular TIN exception reason provides an opportunity for entities and individuals who file license applications or otherwise conduct business with the Commission to circumvent their TIN provision requirement by falsely identifying themselves in CORES as petitioners or non-feeable complainants. We therefore propose to eliminate this TIN exception reason. We seek comment on this proposal and on how we should treat FRNs that were obtained by entities and individuals holding licenses or other authorizations (*i.e.*, doing business with the Commission) through inappropriate use of this TIN exception reason.

34. *Temporary Exceptions.* Under our existing processes, entities who have applied for (but have not yet received) their EIN from the IRS are considered temporarily exempt from providing a TIN when registering in CORES. Similarly, individuals who have applied for, but have not yet received, their SSN from the SSA are temporarily exempt from providing their TIN. In CORES, these exception reasons are phrased as “The EIN has been applied for” and “Applied for” for entities and individuals, respectively. Unfortunately, CORES does not have the capability to automatically revisit these temporary exceptions, and often entities and individuals claiming this exception are awarded a license and fail to

<sup>36</sup> See the Frequently Asked Questions section on the Commission's CORES website, <https://fjallfoss.fcc.gov/coreWeb/html/know.html#q103>, “What do you mean by “doing business” with the FCC?”

provide a valid TIN at a later date. Thus, as a practical matter, entities and individuals who have claimed this temporary TIN exception are effectively treated by the Commission as having received permanent waivers of the TIN provision requirement. To remedy this, we propose to establish a time frame within which such entities and individuals must subsequently provide their TIN. The time remaining before the expiration of this waiver would be viewable when the FRN holder accesses CORES. FRNs that have been obtained through this TIN exception reason would automatically expire and be de-activated after this time period unless a valid TIN is subsequently provided. We seek comment on this proposal. Specifically, we seek comment on the appropriate time frame for the Commission to wait for entities and individuals to furnish their newly acquired TINs to the Commission before deactivation of their FRNs. We note that, according to the IRS website, an entity may obtain an EIN immediately upon completing an on-line form,<sup>37</sup> while it may take “several weeks” for foreign workers to obtain an SSN.<sup>38</sup> Thus, we tentatively conclude that entities should be required to provide their newly-obtained EIN to the Commission within fifteen days, and that individuals should be required to provide their newly-acquired SSN to the Commission within sixty days. We seek comment on these tentative conclusions. In the event that entities and individuals are unable to obtain a TIN within our established time limits, we will set aside their FRNs for an additional period of time so that they may retain their current FRNs once they obtain their TIN, thus preventing the need to re-register in CORES. Such “reserved” FRNs will be inactive, however, and will not be able to be used on remittance payments or applications filed with the Commission until a TIN is provided. We seek comment on the length of time that such FRNs should remain in an inactive status before considered abandoned by the FRN holder and deleted from our system.

35. *Exempted Activities.* Currently, CORES allows both entities and individuals to select a TIN exception reason known as “exempted activities” when registering an FRN. For an entity, this exception applies when IRS rules do not require the acquisition of an EIN due to the nature of the organization. For now, we continue to believe that, while rarely used, this remains a valid TIN exception reason for entities.<sup>39</sup> Therefore, we recommend that this exemption be maintained for future use. For individuals, however, we propose to discontinue the availability of this TIN exception reason. As we have discussed above, we now believe that all individuals—be they domestic or foreign—are able to provide either a valid SSN, or ITIN, or a foreign equivalent taxpayer identification number or general identification number, as issued by their home government. We seek comment on this tentative conclusion. We are concerned, however, that the phrase used by the CORES system to identify this exception, “exempted activities,” is vague and confusing, and could result in tax exempt entities (and possibly individuals, should we ultimately reject our tentative conclusion above) erroneously attempting to use it to avoid providing their TIN. In this proceeding, we seek to further our understanding of the circumstances that may lead the IRS or SSA to exempt particular entities and individuals from the requirement of obtaining an EIN or SSN. Should we require documentation to be provided by entities claiming the proper use of this exemption? What documentation should we require prospective FRN registrants to provide in order to use this TIN exception?

36. *Amateur Club.* Currently, amateur radio clubs wishing to obtain an FRN through CORES are not required to provide a valid TIN of one of their members. Instead, such clubs may complete the registration process by selecting an exemption labeled “amateur club.” We propose to keep the “amateur club” TIN exception reason, but tentatively conclude that we should rename “amateur club”

<sup>37</sup> See <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html?portlet=4>.

<sup>38</sup> See <http://www.ssa.gov/pubs/10107.html#time>.

<sup>39</sup> Virtually all entities are required to obtain an EIN, including foreign companies with employees in the U.S., non-profit organizations, church or church-controlled organizations, farmers cooperatives, state and local governments, Indian Tribal governments, Federal agencies, the U.S. military and the National Guard. See IRS Form SS-4 Application for Employer Identification Number.



to “amateur radio club” for added clarity. In addition, we propose to limit the use of FRNs obtained through the use of the “amateur club” TIN exception reason to applying for amateur licenses only. To apply for other types of licenses, an amateur radio club would be required to furnish a valid TIN. We seek comment on these conclusions. What documentation should we require of amateur radio clubs when seeking to use this TIN exception reason?

37. *Tribal Government or Entity.* A TIN exception reason has been offered to Tribal governments or entities since the inception of CORES. In some cases, Commission staff has independently assigned an FRN to Tribal governments to enable their use of our Tower Construction Notification System (TCNS), which allows federally-recognized Indian Tribes and Alaska Native Villages, Native Hawaiian Organizations, and State Historic Preservation Officers to receive, and respond to, notifications about a proposed tower construction, without the provision of an EIN. We now understand, however, that federally recognized Tribal governments, as well as Tribally owned and operated economic development entities, including myriad types of businesses involving services, products and tourism, such as gaming, are required by the IRS to secure an EIN if they conduct business operations which have employees or report gaming withholdings.<sup>40</sup> Moreover, an internal review of the Commission’s records suggests that approximately a mere 5% of the FRNs held by Tribal governments or enterprises have been assigned by the Commission without the submission of an EIN. We therefore seek comment on whether to eliminate this exception, and require Tribal governments and enterprises to submit an EIN in order to retain their FRNs. We seek comment on how the Commission should handle the assignment of FRNs in the rare case where a Tribal government or enterprise does not have an EIN. We tentatively conclude that Tribal governments and enterprises that have not previously provided an EIN should be permitted to retain their FRNs in the TCNS indefinitely to permit the continued use of the TCNS. In such circumstances, these FRNs will be made inactive and will not be able to be used on remittance payments or license applications with the Commission until an EIN has been provided. We seek comment on this tentative conclusion.

#### **D. “Special Use” FRNs**

38. “Special use” FRNs are electronically assigned to individuals holding attributable interests in various media licenses from whom social security numbers could not be obtained, and are used exclusively by media services licensees to report ownership interests on FCC Form 323. More specifically, if, after using diligent and good-faith efforts, a media service licensee is unable to obtain, and/or does not have permission to use, a social security number in order to generate an FRN for any specific individual whose FRN must be reported on Form 323, such licensee may obtain a “special use” FRN through a mechanism contained in the electronic Form 323.<sup>41</sup> Licensees that use “special use” FRNs are deemed to be fully compliant with the Form 323 filing obligation. These “special use” FRNs are generated through the Media Bureau’s Consolidated Database System (CDBS), not CORES, and, significantly, can be used for no other purpose at the Commission other than for licensees to fulfill their Form 323 media ownership reporting requirements.<sup>42</sup> Thus, the issuance of these “special use” FRNs does

<sup>40</sup> See IRS Form SS-4 Application for Employer Identification Number. Although federally recognized Indian Tribes are not subject to income taxes, Tribal governments are still required to obtain an EIN if they conduct business operations which have employees, issue information returns, or report gaming withholdings. See generally, <http://www.irs.gov/govt/tribes/index.html>.

<sup>41</sup> See “Form 323 Frequently Asked Questions,” at [http://www.fcc.gov/bureaus/mb/industry\\_analysis/form323faqs.html](http://www.fcc.gov/bureaus/mb/industry_analysis/form323faqs.html).

<sup>42</sup> See, e.g., *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket Nos. 07-294, 06-121, 02-277, and 04-228, and MM Docket Nos. 01-235, 01-317, and 00-244, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5908, para. 21 (2009).



not compromise the Commission's obligations under the DCIA.

39. We seek comment on whether it would be appropriate to generate and assign "special use" FRNs in other contexts at the Commission, such as to fulfill other ownership reporting requirements. For example, wireless licensees are required to report those entities and individuals that hold a 10% or greater interest on FCC Form 602 when seeking new licenses, transfers of control/assignments, and renewals, or while applying to participate in an auction conducted through competitive bidding.<sup>43</sup> Similarly, companies seeking to obtain or transfer control of domestic or international section 214 authorizations are required to report 10% or greater ownership interests. Would "special use" FRNs be helpful for such licensees/authorization holders that have difficulty obtaining investor information to make FCC filings? Again, we emphasize that these "special use" FRNs would not be eligible to be utilized for any other purpose at the Commission other than to fulfill ownership reporting requirements. In what other situations should we consider making available the use of "special use" FRNs?

#### **E. Registrant E-mail Addresses**

40. Currently, entities and individuals are given the opportunity to voluntarily provide an e-mail address when completing the CORES registration process to obtain an FRN. Given the significant increase in the use of and dependence on e-mail in the years since CORES first became operational, however, we tentatively conclude that all FRN holders should be required to provide an e-mail address upon registration. In this day and age, e-mail communication is an efficient tool for maintaining contact with our regulatees. For example, the provision of a valid e-mail address would enhance the Commission's ability to contact registrants in the event that a remittance issue arises, or if there is a need to disseminate an important notice. In addition, the Commission is committed to reducing the environmental impact of its activities, and intends to increase its use of e-mail and other electronic means to communicate with regulated entities and interested parties in the future. Therefore, we propose to require entities and individuals who register for an FRN for the first time to provide their e-mail address, which will remain hidden from public view. An e-mail address would also be required for each sub-FRN or sub-account that is subsequently established. We seek comment on this proposal.

41. We also seek comment on how the Commission should treat previously registered FRNs for which FRN holders did not voluntarily furnish an e-mail address. What is the least disruptive or most efficient way for the Commission to obtain these e-mail addresses? Should current FRN holders be required to provide their e-mail addresses the next time they attempt to use their FRN on an electronic Commission filing? We also seek comment on whether entities and individuals should be required to provide the e-mail addresses of their points of contact. Moreover, we tentatively conclude that entities and individuals should be required to navigate an e-mail validation process at the time of registration by clicking on a link that CORES will automatically send to the e-mail address that was provided. Should we require entities and individuals to update their e-mail addresses that are on file in CORES as part of the license renewal process? We seek comment on these questions.

#### **F. Creation of a User ID**

42. As is typically the case with most online information systems, CORES requires FRN holders to input a "User ID" in order to access the system. Currently, CORES does not offer FRN holders the option to choose or modify their User ID; instead, for all FRN holders, their assigned ten-digit FRN serves as their User ID. In the interest of implementing customer improvements, we tentatively conclude that FRN holders should be provided with the ability to create, at their discretion, a custom User ID. We

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<sup>43</sup> See 47 C.F.R. § 1.2112(a).

seek comment on this conclusion. Should the FRN serve as the initial default User ID until it is modified by the FRN holder?

43. In addition, we are aware of business practices in which third-party representatives (*e.g.*, outside legal counsel) for several clients either establish an FRN for each of their clients or regularly require access to each client's FRN. In either event, these third-party CORES users are currently required to log out of the CORES system before being able to log-in to the next FRN in question. We seek comment on whether we should permit third-party CORES users to associate a custom User ID with multiple FRNs that belong to multiple clients, thereby permitting access to various FRNs with just a single log-in to the CORES system. We ask commenters to identify any risks that might be associated with permitting third-parties to access multiple FRNs with a single long-in. For example, would this feature hinder the ability of law firms to validate or audit charges later billed to clients for work conducted on their behalf?

#### **G. Log-in Information**

44. As currently designed, the CORES log-in information that is created by an FRN holder consists of two elements: a single password and, as a password recovery tool, a Personal Security Question/Answer. One drawback to this system is that, if an FRN holder authorizes multiple individuals to utilize the FRN, the log-in information must be shared among these different individuals. This, in turn, creates a security risk for the FRN holder every time the entity undergoes a personnel change.

45. To remedy this, we propose to provide entities with the option to create a unique User ID for each individual that will be permitted to use the FRN (or a particular sub-FRN, as the case may be). Each User ID would have a unique password and associated Personal Security Question. Entities would have the ability to delete any particular User IDs that have been created, or have them reset with the help of the CORES help desk. We seek comment on this tentative conclusion. Should each registered entity be permitted to designate an "administrator" or "primary user account," with the ability to modify or delete the accounts of individual users? Alternatively, should each user have the ability to create a new User ID or modify an existing one? If so, should we notify a designated sub-FRN or sub-account when a new user has been added? In addition, we seek comment on whether individuals should have the ability to create additional User IDs to access their FRN as well. Why or why not?

#### **H. Using CORES to Alert FRN Holders About Financial or Other Administrative Issues**

46. In its current form, CORES lacks the capability to alert FRN holders about known financial or other administrative-related issues regarding their standing at the Commission, such as their status in the Commission's Red Light Display System, their debarment status,<sup>44</sup> or the fact that we have discovered that their contact information is incorrect or nonoperational. We believe adding such features to CORES will benefit the Commission and regulatees alike, and tentatively conclude that the Commission should have the ability to communicate such issues to regulatees through CORES. One option for accomplishing this is to post warning messages on CORES that would appear the next time a regulatee accesses its FRN through the system. Another use for this feature might be to display payment histories and unpaid bills for Commission-related activities, such as unpaid fines and forfeitures, as well as the section 9 regulatory fee payment status. Alternatively, or in addition to the above, CORES could send an alert notification electronically to the e-mail address provided by the FRN holder. We seek

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<sup>44</sup> The Commission's rules at 47 C.F.R. § 1.2001, *et seq.*, require that each applicant requesting professional or commercial licenses certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that include Commission benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

comment on these proposals. Should displays, prompts and notifications of this nature come to an FRN holder's attention immediately upon logging in to any Commission system, or just upon logging in to CORES? Should certain information just be available to the registrant of the single FRN, to certain pre-designated FRN sub-account registrants, or to all of an FRN's registrants? Taking into account any privacy or security concerns, which information should be available to all of an FRN's registrants or to just specific users? We seek comment on how entities and individuals would best like to see this information displayed and managed.

#### **I. Tax Exempt Indicator**

47. We propose to add a data field to FRNs that would enable entities and individuals to indicate any tax exempt status that they possess through CORES. Under our proposal, entities and individuals claiming to be tax exempt would be required to provide substantiating documentation to the Commission through CORES for review within thirty (30) days of registration; otherwise, the tax exempt indicator would be removed from the FRN record.<sup>45</sup> Because tax-exempt entities generally also qualify for a reduction or elimination of their section 8 or section 9 annual regulatory fee requirements, the availability of such data and documentation through CORES would simplify the process for confirming eligibility for a reduction of (or exemption from) annual fee requirements, thus improving our financial operations. We seek comment on this proposal. Once scanned or uploaded, the documentation would be publicly accessible through CORES via a hyperlink or similar icon. In the event that the tax exempt status is not accepted by the Commission, most likely due to a lack of proper documentation, we tentatively conclude that the entity or individual would be notified of this determination through its FRN in CORES, and its tax exempt indicator would be changed as deemed appropriate. We seek comment on this proposal, as well as on any appeal process that should be implemented.

#### **J. Bankruptcy Indicator**

48. In certain contexts, our various Bureaus and Offices have an interest in knowing when industry participants are filing for (or emerging from) bankruptcy. For example, the Commission is required to process assignments or transfers of control of licenses for parties that enter bankruptcy.<sup>46</sup> Also, the Commission's Office of Financial Operations routinely receives requests for waiver of Section 9 regulatory fees from debtors claiming to be in bankruptcy. Furthermore, the Commission sometimes assumes the role of debt collector as one of a bankrupt regulatee's many creditors.<sup>47</sup> Currently, the Commission does not have a central depository of notifications that an entity is in bankruptcy.

49. To reduce administrative burdens at the Commission and enable our Bureaus and Offices to better coordinate their efforts to fulfill our regulatory obligations to our regulatees that have filed for bankruptcy, we propose to add a data field that would enable entities and individual license holders (or their representatives) to notify the Commission through CORES that they have entered into bankruptcy, or that there has been a change in their bankruptcy status (such as, for example, when they emerge from bankruptcy under Chapter 11 of the U.S. Bankruptcy Code).<sup>48</sup> If this proposal is adopted, such entities

<sup>45</sup> The most commonly accepted documentation is an IRS determination letter. An entity's IRS determination letter proves that it has been recognized by the IRS as a nonprofit, tax-exempt entity under section 501 of the Internal Revenue Code. Acceptable documentation may also include state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority.

<sup>46</sup> See, e.g., 47 C.F.R. §§ 1.948(g), 5.59(d), 25.119(c), 63.03(d)(2), 63.24(g), 73.3541.

<sup>47</sup> Debt collected by the Commission includes, in part, auction debt, fines and forfeitures for rule violations, and regulatory fee obligations.

<sup>48</sup> We clarify that this requirement would apply solely to entities and individuals that hold FCC licenses or certifications, or otherwise are considered to be doing business with the agency. Regulated entities' individual

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and individuals would be required to provide their bankruptcy court filing to the Commission in conjunction with an FCC filing involving their bankruptcy, such as for an involuntary transfer of control to the debtor-in-possession or a request for waiver of certain regulatory fees, by electronically scanning it and uploading it to CORES through their FRN account. We seek comment on our bankruptcy notification proposals. Would it be unduly burdensome or duplicative to require regulatees that have filed for bankruptcy to electronically submit their bankruptcy court filings to the Commission through CORES? We also seek comment on whether bankruptcy filings that are electronically scanned to the entity's/individual's FRN account should be made viewable to the public in CORES or whether they only should be viewable to Commission staff. We emphasize that the proposed bankruptcy notification fields would not be intended to take the place of any of the Commission's existing filing requirements for bankruptcy cases, and that we will continue to uphold our filing requirements for entities and individual license holders seeking financial relief. Thus, entities and individuals who have notified the Commission through CORES that they have entered into bankruptcy will continue to be required to formally file for any transfers of control or assignment of licenses, as well as for any waivers, reductions and deferrals of regulatory fees they seek.

#### **K. Incorporating Data Contained in the Commission's Form 499 Database**

50. Section 254(d) of the Communications Act of 1934, as amended (the "Act") directs every telecommunications carrier that provides interstate telecommunications service to contribute to the mechanisms established by the Commission to preserve and advance universal service.<sup>49</sup> As a result, all entities that provide interstate telecommunications services to the public for a fee must contribute to the universal service fund.<sup>50</sup> The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund.<sup>51</sup> Certain providers, such as *de minimis* providers, however, do not contribute directly to the universal service fund.<sup>52</sup> The amount that entities are required to contribute to the fund is based on certain revenues reported on FCC Form 499, also known as the Telecommunications Reporting Worksheets.<sup>53</sup> Specifically, contributors report historical revenue annually using FCC Form 499-A;<sup>54</sup> projected future quarterly revenue is reported quarterly using the

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investors who have themselves filed for bankruptcy protection would not be required to report their status to the agency under this proposal.

<sup>49</sup> 47 U.S.C. § 254(d).

<sup>50</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797, para. 787 (1997) (subsequent history omitted).

<sup>51</sup> See, e.g., *Universal Service Contribution Methodology*, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over internet protocol (VoIP) providers to contribute to the universal service fund because they are providers of interstate telecommunications).

<sup>52</sup> See, e.g., *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5381, 5481, para. 298.

<sup>53</sup> The forms are filed with the Universal Service Administrative Company ("USAC"), which is the entity responsible for administering and managing the fund. See 47 C.F.R. § 54.711(a).

<sup>54</sup> Form 499-A is generally filed on April 1 of each year. See Universal Service Administrative Company, Schedule of Filings, at <http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx> (USAC Form 499 Filing Schedule).

related FCC Form 499-Q.<sup>55</sup>

51. In addition to revenue information, Forms 499-A and 499-Q are used by telecommunications carriers to report basic identifying information, such as the address of the entity's corporate headquarters; the name and address of the entity's Chief Executive Officer, the name and address of the entity's agent for service of process; and the jurisdictions in which the entity provides telecommunications services. This data is then compiled and made publicly available through a searchable electronic database that is available on the FCC's web site.<sup>56</sup> Individual records may be accessed either by a particular entity's 499 Filer ID Number or, conveniently, its FRN.

52. Thus, in accordance with the Paperwork Reduction Act's requirement that we "improve the integrity, quality, and utility of information to all users within and outside the agency,"<sup>57</sup> we seek comment on how best to connect and incorporate data reported by registrants on FCC Form 499 (and other data systems) into CORES. As explained above, information filed as a part of FCC Form 499 is already publicly available (and searchable) through an FCC database. Incorporating this data into CORES will improve the ability of both filing entities and agency staff to review the data for errors and omissions, and speed the identification of those entities that have reported an erroneous FRN on their Form 499 filings. We seek comment on whether there are emerging industry conventions or data formats for combining data to which we should adhere or from which we should take guidance. Also, do our various proposals to limit entities to a single FRN create difficulties for affiliated entities when filing FCC Form 499?

#### **L. Company Dashboard**

53. In light of the Commission's intent to develop and deploy an agency-wide Consolidated Licensing System,<sup>58</sup> we also seek comments on the usefulness of utilizing a company dashboard or summary profile that filers would see upon login, which would serve as a central repository of information for the filer. As described above, through the dashboard, the filer would have the ability to quickly and easily review various pertinent information, such as the progress on their filings, fees that are due, the history of files the filer has submitted, as well as any other important information the filer may need. Other uses for such a dashboard may include: identifying any information that is missing from a pending application, updating their profile, and detecting actions requiring immediate attention. How should such a dashboard be designed so that it is simple for users to navigate? Should users be able to contact the Commission in an online chat if they have questions? Should there be a "guided wizard" to

<sup>55</sup> *Id.*

<sup>56</sup> See <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>.

<sup>57</sup> The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.). Specifically, the PRA requires:

(b) With respect to general information resources management, each agency shall--

(1) manage information resources to--

(A) reduce information collection burdens on the public;

(B) increase program efficiency and effectiveness; and

(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security [ . . . ]

44 U.S.C. § 3506.

<sup>58</sup> See para. 10, *supra*.



help users fill-out an application(s)/form(s)? What other information would be useful if readily available to users through such a dashboard? We seek comment on this proposal.

#### **M. Petition for Rulemaking**

54. We wish to take this opportunity to address a Petition for Rulemaking that was filed with the Commission by Frederick Maia (“Maia”) concerning certain records contained in the CORES system and the Commission’s Universal Licensing System (“ULS”).<sup>59</sup> Maia notes that, with the exception of an applicant’s TIN, the personal licensee information contained in these two systems is exactly the same.<sup>60</sup> Maia therefore proposes that the CORES system be automatically updated whenever an amateur radio operator applicant updates his or her name and address in ULS.<sup>61</sup> Maia further notes that Commission rules do not require an amateur radio operator applicant to provide telephone numbers, fax numbers or e-mail addresses in CORES or ULS, and suggests that the Commission may wish to make submission of this additional information mandatory in the Part 1 and Part 97 rules.<sup>62</sup>

55. The petitioner proposes this change to CORES based on his experience in amateur radio service. Maia notes that while section 97.23 of the Commission’s rules requires that license grants “must show the grantee’s correct name and mailing address,” there is nothing in the Part 97 rules that obligates a licensee to also keep their CORES name and address record updated.<sup>63</sup> The Maia Petition goes on to state that many amateur radio operators who have submitted a name or address update in ULS believe that they have fulfilled their obligation to keep their personal information accurate at the Commission.<sup>64</sup> Maia maintains that few amateur radio operators know that they are also required to update their CORES listing.<sup>65</sup>

56. We seek comment on this proposal. As noted above, the Commission has begun a proceeding related to the development of a new Consolidated Licensing System, which would eventually replace ULS. Should modifications or updates to personal information in ULS/CLS be automatically imported into CORES, or vice versa? Should such information be uploaded from ULS/CLS into CORES (or, alternatively, from CORES to ULS/CLS) voluntarily, that is, only at the user’s option? Should this feature apply to all duplicative personal information, or should we require that users change some information in each system manually? Why or why not? We seek comment on what other Commission services would benefit from this auto-update feature.

#### **N. Other Considerations**

57. Foreign nationals and non-United States citizens who are not employed in the United States currently are not required to provide a domestic mailing address as part of the process for obtaining an FRN through CORES. It has often proven difficult for the Commission to contact or otherwise collect delinquent debt from these foreign individuals through their foreign addresses. Therefore, we tentatively

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<sup>59</sup> See Petition for Rulemaking, WTB 07-36, filed July 11, 2007 (“Maia Petition”). The Universal Licensing System (“ULS”) is a Commission electronic filing system that enables the public to research applications, licenses, and antenna structures, among other things, regarding wireless services. See <http://wireless.fcc.gov/uls/index.htm>.

<sup>60</sup> Maia Petition at 2.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 2-3.

<sup>63</sup> *Id.* at 5. See 47 C.F.R. § 97.23.

<sup>64</sup> Maia Petition at 5.

<sup>65</sup> *Id.* at 2 and 5 (citing 47 C.F.R. § 1.8002).

conclude that foreign nationals and non-United States citizens who are not employed in the United States should be required to designate and identify an address for a domestic agent authorized to accept notice from the Commission either as a prerequisite to or as part of the process of obtaining an FRN. We seek comment on this proposal.

58. Finally, we seek comment on any other issues relating to the customer interface with CORES that the Commission should consider in this rulemaking proceeding. Are there particular issues relating to performance or access to the system that the Commission should endeavor to improve through this proceeding? Are there any other issues or improvements that we could make to the CORES system that have not been raised above? We particularly invite commenters to discuss challenges they have had with accessing, using, or exchanging information with CORES or with their FRNs in the past, and invite comment on how such difficulties could be ameliorated in the future.

#### IV. PROCEDURAL MATTERS

##### A. Initial Regulatory Flexibility Analysis

59. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities of the proposals suggested in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix A. Written public comments on the IRFA must be filed in accordance with the comment filing deadlines indicated on the first page of this document, and using the procedures and format described in Appendix A and section IV.D., below.

##### B. Paperwork Reduction Act of 1995 Analysis

*Initial Paperwork Reduction Act Analysis.* This *Notice of Proposed Rulemaking* contains proposed new and modified information collection requirements.<sup>66</sup> The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

60. In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via email to [nfraser@omb.eop.gov](mailto:nfraser@omb.eop.gov) or via fax at 202-395-5167.

61. *Further Information.* For additional information concerning the proposed information collection requirements contained in this *Notice of Proposed Rulemaking*, send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Warren Firschein, Federal Communications Commission, Room 3-C768, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to [Warren.Firschein@fcc.gov](mailto:Warren.Firschein@fcc.gov). To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) go to this OMB/GSA web page: <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select

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<sup>66</sup> The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

Agency” box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

### C. Ex Parte Rules

62. *Permit-But-Disclose.* This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under section 1.1206(b) of the Commission’s rules.<sup>67</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two-sentence description of the views and arguments presented is generally required.<sup>68</sup> Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

### D. Filing Requirements

63. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

<sup>67</sup> See 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

<sup>68</sup> See 47 C.F.R. § 1.1206(b)(2).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

64. Parties should send a copy of their filings to Warren Firschein, Federal Communications Commission, Room 3-C768, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to [Warren.Firschein@fcc.gov](mailto:Warren.Firschein@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

65. Documents in Docket No. 10-234 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

#### **E. Accessible Formats**

66. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: 202-418-0530 or TTY: 202-418-0432.

#### **F. Additional Information**

67. For additional information on this proceeding, contact Warren Firschein at (202) 418-0844, or via e-mail at [Warren.Firschein@fcc.gov](mailto:Warren.Firschein@fcc.gov). Press inquiries should be directed to David Fiske at (202) 418-0513.

### **V. ORDERING CLAUSES**

68. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 158(c)(2), 159(c)(2), and 303(r); 5 U.S.C. § 5514; and Section 7701 of the Debt Collection Improvement Act of 1996, 31 U.S.C. § 7701(c)(1), NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking*.

69. **IT IS FURTHER ORDERED** that the Secretary shall cause a copy of this *Notice of Proposed Rulemaking* to be published in the Federal Register.

70. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible economic impact on small entities of the policies and rules proposed in this *Notice of Proposed Rulemaking* (“*Notice*”).<sup>2</sup> Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>3</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>4</sup>

#### A. Need for and Objectives of the Proposed Rules.

2. The *Notice* tentatively concludes that the Commission should modify its electronic registration system, known as “CORES,” to make improvements to the process by which entities and individuals access and make use of information that is contained in CORES and to make it easier for individuals and entities to do business with the FCC. Specifically, the *Notice* proposes to limit entities and individuals to the use of a primary FRN, while allowing subsidiary or associated FRNs; allow entities to identify multiple points of contact; eliminate some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number (“TIN”) at the time of registration; require FRN holders to provide their e-mail addresses; give FRN holders the option to create a custom User ID; modify CORES log-in procedures for entities so as to ease use by multiple individuals; add attention flags and notices that would inform FRN holders of their financial standing before the Commission when logging onto CORES; and add data fields to enable FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. These modifications, if implemented, would eliminate some of the system’s current limitations and improve the customer interface with CORES so that customers can use the system in a more efficient and effective manner, especially in light of the Commission’s intent to develop an agency-wide consolidated licensing system. The proposed changes would also improve the Commission’s ability to comply with various statutes that govern debt collection and the collection of personal information by the federal government.

#### B. Legal Basis.

3. The proposed action is authorized under Sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 158(c)(2), 159(c)(2), and 303(r); 5

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (“CWAA”). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).

<sup>2</sup> We also note that we could certify this action under 5 U.S.C. § 605, given that a substantial number of entities and individuals doing business with the Commission have already received their FRN by virtue of their prior registration in CORES, and the changes proposed here will have no significant economic impact on them. Moreover, we have proposed to make it extremely simple, and virtually cost-free, for anyone else to obtain or revise their already-existing FRN(s). Finally, the few entities that, as a result of our action, would be required to scan and file documentation demonstrating their tax-exempt or bankruptcy status will experience only a minor compliance burden.

<sup>3</sup> 5 U.S.C. § 603(a).

<sup>4</sup> *Id.*



U.S.C. § 5514; and Section 7701 of the Debt Collection Improvement Act of 1996, 31 U.S.C. § 7701(c)(1).

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.**

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>5</sup> The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.<sup>8</sup>

5. Any proposed changes or additions to the Commission’s Part 1 rules that may be made as a result of the *Notice* would be of general applicability to all services, applying to all entities of any size that apply for or hold Commission licenses, permits, certifications, etc., as well as entities or individuals that have attributable ownership interests in such entities, and have already obtained a unique identifying number through CORES called an FCC Registration Number, or “FRN.” We also note that these changes may also affect small entities, such as law firms and accounting firms, that prepare filings or otherwise access CORES on the behalf of regulatees. The Commission does not keep statistics on the number of such small entities, but we conclude that any burden on such entities is unlikely to be significant.

6. **Small Businesses.** Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>9</sup>

7. **Small Organizations.** Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>10</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup>

8. **Small Governmental Jurisdictions.** The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>12</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>13</sup> We estimate that, of this total,

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<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> [5 U.S.C. § 601\(6\)](#).

<sup>7</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. 601(3).

<sup>8</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>9</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (accessed Jan. 2009).

<sup>10</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> 5 U.S.C. § 601(5).

<sup>13</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, p. 272, Table 415.

84,377 entities were “small governmental jurisdictions.”<sup>14</sup> Thus, we estimate that most governmental jurisdictions are small.

9. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>15</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>16</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. **Incumbent Local Exchange Carriers (“ILECs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>17</sup> According to Commission data,<sup>18</sup> 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

11. **Competitive Local Exchange Carriers (“CLECs”), Competitive Access Providers (“CAPs”), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>19</sup> According to Commission data,<sup>20</sup> 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are “Other Local Service Providers.” Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers,

<sup>14</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>15</sup> 15 U.S.C. § 632.

<sup>16</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” *See* 15 U.S.C. § 632(a) (“Small Business Act”); 5 U.S.C. § 601(3) (“RFA”). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

<sup>17</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>18</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “*Trends in Telephone Service*” at Table 5.3, Page 5-5 (Aug. 2008) (“*Trends in Telephone Service*”). This source uses data that are current as of November 1, 2006.

<sup>19</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>20</sup> “*Trends in Telephone Service*” at Table 5.3.

“Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities.

12. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>21</sup> According to Commission data,<sup>22</sup> 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

13. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>23</sup> According to Commission data,<sup>24</sup> 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

14. **Payphone Service Providers (“PSPs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>25</sup> According to Commission data,<sup>26</sup> 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities.

15. **Interexchange Carriers (“IXCs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> According to Commission data,<sup>28</sup> 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities.

16. **Operator Service Providers (“OSPs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup> According to Commission data,<sup>30</sup> 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the

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<sup>21</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>22</sup> “Trends in Telephone Service” at Table 5.3.

<sup>23</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>24</sup> “Trends in Telephone Service” at Table 5.3.

<sup>25</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>26</sup> “Trends in Telephone Service” at Table 5.3.

<sup>27</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>28</sup> “Trends in Telephone Service” at Table 5.3.

<sup>29</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>30</sup> “Trends in Telephone Service” at Table 5.3.

Commission estimates that the majority of OSPs are small entities.

17. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>31</sup> According to Commission data,<sup>32</sup> 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities.

18. **800 and 800-Like Service Subscribers.**<sup>33</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.<sup>35</sup> According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

19. **Satellite Telecommunications and All Other Telecommunications.** These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.<sup>36</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>37</sup> The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.<sup>38</sup>

20. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>39</sup> For this category, Census Bureau data for 2002 show that there

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<sup>31</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>32</sup> “Trends in Telephone Service” at Table 5.3.

<sup>33</sup> We include all toll-free number subscribers in this category.

<sup>34</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>35</sup> “Trends in Telephone Service” at Tables 18.4, 18.5, 18.6, and 18.7.

<sup>36</sup> 13 C.F.R. § 121.201, NAICS code 517410.

<sup>37</sup> 13 C.F.R. § 121.201, NAICS code 517919.

<sup>38</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

<sup>39</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

were a total of 371 firms that operated for the entire year.<sup>40</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>41</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities.

21. The second category of All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.”<sup>42</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>43</sup> Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>44</sup> Consequently, we estimate that the majority of All Other Telecommunications firms are small entities.

22. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>45</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>46</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>47</sup> Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>48</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>49</sup> For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>50</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of

<sup>40</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>41</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>42</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>43</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>44</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

<sup>45</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>46</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>47</sup> 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>48</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>49</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>50</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).



1,000 employees or more.<sup>51</sup> Thus, we estimate that the majority of wireless firms are small.

23. **Common Carrier Paging.** As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of “Cellular and Other Wireless Telecommunications.”<sup>52</sup> Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>53</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>54</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>55</sup> Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>56</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>57</sup> For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>58</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>59</sup> Thus, we estimate that the majority of wireless firms are small.

24. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>60</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>61</sup> The SBA has approved this definition.<sup>62</sup> An initial auction of Metropolitan Economic Area

<sup>51</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>53</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>54</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>55</sup> 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>56</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>57</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>58</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>59</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>60</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (“*Paging Second Report and Order*”); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

<sup>61</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>62</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (“WTB”), FCC (Dec. 2, 1998) (“*Alvarez Letter 1998*”).

(“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>63</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>64</sup> A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>65</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>66</sup>

25. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of “paging and messaging” services.<sup>67</sup> Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>68</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

26. **2.3 GHz Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>69</sup> The SBA has approved these definitions.<sup>70</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

27. **1670-1675 MHz Services.** An auction for one license in the 1670-1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

28. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>71</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>72</sup> According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.<sup>73</sup>

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<sup>63</sup> See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>64</sup> See *id.*

<sup>65</sup> See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>66</sup> See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

<sup>67</sup> “Trends in Telephone Service” at Table 5.3.

<sup>68</sup> “Trends in Telephone Service” at Table 5.3.

<sup>69</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>70</sup> See *Alvarez Letter 1998*.

<sup>71</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>72</sup> *Id.*

<sup>73</sup> “Trends in Telephone Service” at Table 5.3.

Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>74</sup> We therefore estimate that 222 of these are small under the SBA small business size standard.

29. **Broadband Personal Communications Service.** The broadband personal communications services (“PCS”) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>75</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>76</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>77</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>78</sup> In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>79</sup>

30. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.<sup>80</sup> Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.<sup>81</sup> Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.<sup>82</sup> Of the 14 winning bidders, six were designated entities.<sup>83</sup> In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.<sup>84</sup>

31. **Advanced Wireless Services.** In 2008, the Commission conducted the auction of

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<sup>74</sup> “Trends in Telephone Service” at Table 5.3.

<sup>75</sup> See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-7852, paras. 57-60 (1996) (“PCS Report and Order”); see also 47 C.F.R. § 24.720(b).

<sup>76</sup> See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

<sup>77</sup> See *Alvarez Letter 1998*.

<sup>78</sup> FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

<sup>79</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>80</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>81</sup> See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

<sup>82</sup> See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

<sup>83</sup> *Id.*

<sup>84</sup> See *Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78*, *Public Notice*, 23 FCC Rcd 7496 (2008) (“AWS-1 and Broadband PCS Procedures Public Notice”).

Advanced Wireless Services (“AWS”) licenses.<sup>85</sup> This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.<sup>86</sup> Four winning bidders that identified themselves as very small businesses won 17 licenses.<sup>87</sup> Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

32. **Narrowband Personal Communications Services.** In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>88</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>89</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.<sup>90</sup> A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>91</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>92</sup> The SBA has approved these small business size standards.<sup>93</sup> A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>94</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

<sup>85</sup> See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

<sup>86</sup> *Id.* at 23 FCC Rcd at 7521-22.

<sup>87</sup> See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period”, *Public Notice*, 23 FCC Rcd 12749-65 (2008).

<sup>88</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

<sup>89</sup> See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

<sup>90</sup> *Amendment of the Commission’s Rules to Establish New Personal Communications Services*, Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (“*Narrowband PCS Second Report and Order*”).

<sup>91</sup> *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

<sup>92</sup> *Id.*

<sup>93</sup> See *Alvarez Letter 1998*.

<sup>94</sup> See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).



33. **700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>95</sup> The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>96</sup> A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>97</sup> Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses. The third category is “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>98</sup> The SBA approved these small size standards.<sup>99</sup> The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>100</sup> The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>101</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>102</sup> In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

34. In 2007, the Commission adopted the *700 MHz Second Report and Order*.<sup>103</sup> The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission’s standard simultaneous multiple-round (“SMR”) auction format for the A, B, D, and E

<sup>95</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002) (“*Channels 52-59 Report and Order*”).

<sup>96</sup> See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, para. 172.

<sup>97</sup> See *id.*

<sup>98</sup> See *id.*, 17 FCC Rcd at 1088, para. 173.

<sup>99</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (“*Alvarez Letter 1999*”).

<sup>100</sup> See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>101</sup> See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>102</sup> See *id.*

<sup>103</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, Second Report and Order, FCC 07-132 (2007) (“*700 MHz Second Report and Order*”), 22 FCC Rcd 15289 (2007).



block licenses and an SMR auction design with hierarchical package bidding (“HPB”) for the C Block licenses. Later in 2008, the Commission concluded Auction 73.<sup>104</sup> A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.<sup>105</sup> The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.<sup>106</sup>

35. **700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>107</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>108</sup> Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>109</sup> SBA approval of these definitions is not required.<sup>110</sup> In 2000, the Commission conducted an auction of 52 Major Economic Area (“MEA”) licenses.<sup>111</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>112</sup> Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).<sup>113</sup> A single licensee that did not participate in the

<sup>104</sup> Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice*, 23 FCC Rcd 4572 (2008).

<sup>105</sup> *Id.* 23 FCC Rcd at 4572-73.

<sup>106</sup> *Id.*

<sup>107</sup> See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000) (“*746-764 MHz Band Second Report and Order*”).

<sup>108</sup> See *746-764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343, para. 108.

<sup>109</sup> See *id.*

<sup>110</sup> See *id.*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

<sup>111</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>112</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>113</sup> See *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15339-15344 ¶¶ 118-134 (2007) (*700 MHz Second Report and Order*).

agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.<sup>114</sup> Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

36. **Specialized Mobile Radio.** The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>115</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>116</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>117</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>118</sup> A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>119</sup>

37. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>120</sup> In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.<sup>121</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

38. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.<sup>122</sup> We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

39. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities

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<sup>114</sup> *Id.*

<sup>115</sup> 47 C.F.R. § 90.814(b)(1).

<sup>116</sup> 47 C.F.R. § 90.814(b)(1).

<sup>117</sup> *See Alvarez Letter 1999.*

<sup>118</sup> *See* “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>119</sup> *See* “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>120</sup> *See* “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17162 (2000).

<sup>121</sup> *See*, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

<sup>122</sup> *See generally* 13 C.F.R. § 121.201, NAICS code 517210.

specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).<sup>123</sup> This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>124</sup> The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

40. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>125</sup> This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>126</sup> A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.<sup>127</sup> The SBA has approved these small size standards.<sup>128</sup> Auctions of Phase II licenses commenced on and closed in 1998.<sup>129</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (“EAG”) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.<sup>130</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>131</sup> A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.<sup>132</sup> In 2007, the Commission conducted a fourth auction of the 220 MHz licenses.<sup>133</sup> Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded \$3 million and did not exceed \$15 million for the preceding three years (“small business”) received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$3 million for the preceding three years received a 35 percent discount on its winning bid (“very small business”). Auction 72, which offered 94 Phase II 220 MHz

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

<sup>126</sup> *Id.* at 11068, para. 291.

<sup>127</sup> *Id.*

<sup>128</sup> See Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) (“*Alvarez to Phythyon Letter 1998*”).

<sup>129</sup> See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (1998).

<sup>130</sup> See “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (1999).

<sup>131</sup> See “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (1999).

<sup>132</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (2002).

<sup>133</sup> See “Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72,” *Public Notice*, 22 FCC Rcd 3404 (2007).

Service licenses, concluded in 2007.<sup>134</sup> In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

41. **Cellular Radiotelephone Service.** Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.<sup>135</sup> Bidding credits for designated entities were not available in Auction 77.<sup>136</sup> In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.<sup>137</sup>

42. **Private Land Mobile Radio (“PLMR”).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.<sup>138</sup> The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.<sup>139</sup>

43. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

44. **Fixed Microwave Services.** Fixed microwave services include common carrier,<sup>140</sup> private operational-fixed,<sup>141</sup> and broadcast auxiliary radio services.<sup>142</sup> At present, there are approximately

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<sup>134</sup> See “Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, *Public Notice*, 22 FCC Rcd 11573 (2007).

<sup>135</sup> See Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *Public Notice*, 23 FCC Rcd 6670 (2008).

<sup>136</sup> *Id.* at 6685.

<sup>137</sup> See Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *Public Notice*, 23 FCC Rcd 9501 (2008).

<sup>138</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>139</sup> See generally 13 C.F.R. § 121.201.

<sup>140</sup> See 47 C.F.R. §§ 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>141</sup> Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.<sup>143</sup> The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

45. **39 GHz Service.** The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>144</sup> An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>145</sup> The SBA has approved these small business size standards.<sup>146</sup> The auction of the 2,173, 39 GHz licenses, began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

46. **Local Multipoint Distribution Service.** Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>147</sup> The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>148</sup> An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>149</sup> The

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<sup>142</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

<sup>143</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>144</sup> *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order, 12 FCC Rcd 18600 (1997).

<sup>145</sup> *Id.*

<sup>146</sup> *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

<sup>147</sup> *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997) (“*LMDS Second Report and Order*”).

<sup>148</sup> *See LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, para. 348.

<sup>149</sup> *See id.*



SBA has approved these small business size standards in the context of LMDS auctions.<sup>150</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

47. **218-219 MHz Service.** The first auction of 218-219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (“MSAs”).<sup>151</sup> Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>152</sup> In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.<sup>153</sup> A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.<sup>154</sup> The SBA has approved of these definitions.<sup>155</sup> A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses might be awarded to small businesses.

48. **Location and Monitoring Service (“LMS”).** Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>156</sup> A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.<sup>157</sup> These definitions have been approved by the SBA.<sup>158</sup> An auction for LMS licenses commenced and closed in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

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<sup>150</sup> See *Alvarez to Phythyon Letter 1998*.

<sup>151</sup> See “*Interactive Video and Data Service (IVDS) Applications Accepted for Filing*,” Public Notice, 9 FCC Rcd 6227 (1994).

<sup>152</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>153</sup> *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

<sup>154</sup> *Id.*

<sup>155</sup> See *Alvarez to Phythyon Letter 1998*.

<sup>156</sup> *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) (“*Automatic Vehicle Monitoring Systems Second Report and Order*”); see also 47 C.F.R. § 90.1103.

<sup>157</sup> *Automatic Vehicle Monitoring Systems Second Report and Order*, 13 FCC Rcd at 15192, para. 20; see also 47 C.F.R. § 90.1103.

<sup>158</sup> See *Alvarez Letter 1998*.

49. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>159</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).<sup>160</sup> In the present context, we will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.<sup>161</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

50. **Air-Ground Radiotelephone Service.**<sup>162</sup> The Commission has previously used the SBA’s small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.<sup>163</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.<sup>164</sup> A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>165</sup> These definitions were approved by the SBA.<sup>166</sup> In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). Later in 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

51. **Aviation and Marine Radio Services.** There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.<sup>167</sup> The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.<sup>168</sup> We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to

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<sup>159</sup> The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

<sup>160</sup> BETRS is defined in §§ 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

<sup>161</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>162</sup> The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

<sup>163</sup> 13 C.F.R. § 121.201, NAICS codes 517210.

<sup>164</sup> *Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review – Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket Nos. 03-103 and 05-42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28-42 (2005).

<sup>165</sup> *Id.*

<sup>166</sup> See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

<sup>167</sup> Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. See Amendment of Parts 80 and 87 of the Commission’s Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order*, WT Docket No. 96-82, 11 FCC Rcd 14849 (1996).

<sup>168</sup> 13 C.F.R. § 121.201, NAICS code 517210.

approximately 62,969 licensees that are small businesses under the SBA standard.<sup>169</sup> In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>170</sup> Further, the Commission made available Automated Maritime Telecommunications System (“AMTS”) licenses in Auctions 57 and 61.<sup>171</sup> Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than \$3 million but less than \$15 million for the preceding three years.<sup>172</sup> Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

52. **Offshore Radiotelephone Service.** This service operates on several ultra high frequencies (“UHF”) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>173</sup> There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA’s small business size standard for Wireless Telecommunications Carriers (except Satellite) services.<sup>174</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>175</sup>

53. **Multiple Address Systems (“MAS”).** Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines “small entity” for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.<sup>176</sup> “Very small business” is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.<sup>177</sup> The SBA has approved of these definitions.<sup>178</sup> The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission’s

<sup>169</sup> A licensee may have a license in more than one category.

<sup>170</sup> *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

<sup>171</sup> See “*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures*,” Public Notice, 19 FCC Rcd 9518 (WTB 2004); “*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61*,” Public Notice, 20 FCC Rcd 7811 (WTB 2005).

<sup>172</sup> 47 C.F.R. § 80.1252.

<sup>173</sup> This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001-22.1037.

<sup>174</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>175</sup> *Id.*

<sup>176</sup> See *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

<sup>177</sup> *Id.*

<sup>178</sup> See *Alvarez Letter 1999*.

licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001.<sup>179</sup> Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

54. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For such private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance is that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.<sup>180</sup> The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

55. **1.4 GHz Band Licensees.** The Commission conducted an auction of 64 1.4 GHz band licenses<sup>181</sup> in 2007.<sup>182</sup> In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed \$15 million but do not exceed \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.<sup>183</sup> Neither of the two winning bidders sought designated entity status.<sup>184</sup>

56. **Incumbent 24 GHz Licensees.** This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.<sup>185</sup> The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>186</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

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<sup>179</sup> See "Multiple Address Systems Spectrum Auction Closes," Public Notice, 16 FCC Rcd 21011 (2001).

<sup>180</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>181</sup> See "Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007," Public Notice, 21 FCC Rcd 12393 (WTB 2006).

<sup>182</sup> See "Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69," Public Notice, 22 FCC Rcd 4714 (2007) ("Auction No. 69 Closing PN").

<sup>183</sup> Auction No. 69 Closing PN, Attachment C.

<sup>184</sup> See Auction No. 69 Closing PN.

<sup>185</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>186</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.



57. **Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.<sup>187</sup> “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>188</sup> The SBA has approved these definitions.<sup>189</sup> The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

58. **Broadband Radio Service and Educational Broadband Service.** Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”)).<sup>190</sup> In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.<sup>191</sup> The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.<sup>192</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.<sup>193</sup> The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning

<sup>187</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) (“*24 GHz Report and Order*”); see also 47 C.F.R. § 101.538(a)(2).

<sup>188</sup> *24 GHz Report and Order*, 15 FCC Rcd at 16967, para. 77; see also 47 C.F.R. § 101.538(a)(1).

<sup>189</sup> See Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

<sup>190</sup> *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) (“*MDS Auction R&O*”).

<sup>191</sup> 47 C.F.R. § 21.961(b)(1).

<sup>192</sup> 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard.

<sup>193</sup> Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice*, 24 FCC Rcd 8277 (2009).



bid.<sup>194</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>195</sup> Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

59. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.<sup>196</sup> Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."<sup>197</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.<sup>198</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.<sup>199</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>200</sup> Thus, the majority of these firms can be considered small.

60. **Television Broadcasting.** This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."<sup>201</sup> The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.<sup>202</sup> The Commission has estimated the number of licensed commercial television stations to be 1,395.<sup>203</sup> In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of

<sup>194</sup> *Id.* at 8296.

<sup>195</sup> Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice*, 24 FCC Rcd 13572 (2009).

<sup>196</sup> The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

<sup>197</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>198</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>199</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>200</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>201</sup> U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

<sup>202</sup> 13 C.F.R. § 121.201, NAICS code 515120 (updated for inflation in 2008).

<sup>203</sup> See *FCC News Release*, "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2008/db0318/DOC-280836A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

\$13 million or less.<sup>204</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

61. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>205</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

62. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.<sup>206</sup> These stations are non-profit, and therefore considered to be small entities.<sup>207</sup>

63. In addition, there are also 2,386 low power television stations (LPTV).<sup>208</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

64. **Radio Broadcasting.** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>209</sup> The SBA has established a small business size standard for this category, which is: such firms having \$7 million or less in annual receipts.<sup>210</sup> According to Commission staff review of BIA Publications, Inc.’s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of \$6 million or less. Therefore, the majority of such entities are small entities.

65. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.<sup>211</sup> In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.<sup>212</sup> We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

<sup>204</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>205</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 21.103(a)(1).

<sup>206</sup> See *FCC News Release*, “Broadcast Station Totals as of June 30, 2009,” dated September 4, 2009; [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2008/db0318/DOC-280836A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>207</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>208</sup> See *FCC News Release*, “Broadcast Station Totals as of June 30, 2009,” dated September 4, 2009; [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2008/db0318/DOC-280836A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>209</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

<sup>210</sup> 13 C.F.R. § 121.201, NAICS code 515112 (updated for inflation in 2008).

<sup>211</sup> “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 C.F.R. § 121.103(a)(1) (an SBA regulation).

<sup>212</sup> 13 C.F.R. § 121.102(b) (an SBA regulation).

66. **Auxiliary, Special Broadcast and Other Program Distribution Services.** This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.<sup>213</sup>

67. The Commission estimates that there are approximately 5,618 FM translators and boosters.<sup>214</sup> The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$7.0 million for a radio station or \$14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.<sup>215</sup>

68. **Cable Television Distribution Services.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."<sup>216</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.<sup>217</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.<sup>218</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>219</sup> Thus, the majority of these firms can be considered small.

69. **Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.<sup>220</sup> Industry data indicate that, of

<sup>213</sup> 13 C.F.R. 121.201, NAICS codes 515112 and 515120.

<sup>214</sup> See *supra* note 242.

<sup>215</sup> See 15 U.S.C. § 632.

<sup>216</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>217</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>218</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>219</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>220</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>221</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>222</sup> Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.<sup>223</sup> Thus, under this second size standard, most cable systems are small.

70. **Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>224</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>225</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>226</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>227</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

71. **Open Video Systems.** The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>228</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>229</sup> OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."<sup>230</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence

<sup>221</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>222</sup> 47 C.F.R. § 76.901(c).

<sup>223</sup> Warren Communications News, *Television & Cable Factbook 2008*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

<sup>224</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>225</sup> 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>226</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>227</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

<sup>228</sup> 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report*, 24 FCC Rcd 542, 606 para. 135 (2009) ("Thirteenth Annual Cable Competition Report").

<sup>229</sup> See 47 U.S.C. § 573.

<sup>230</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.



for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.<sup>231</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.<sup>232</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>233</sup> Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>234</sup> Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>235</sup> The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

**72. Cable Television Relay Service.** This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”<sup>236</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.<sup>237</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.<sup>238</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>239</sup> Thus, the majority of these firms can be considered small.

**73. Multichannel Video Distribution and Data Service.** MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity

<sup>231</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>232</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>233</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>234</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

<sup>235</sup> See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

<sup>236</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>237</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>238</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>239</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.



with average annual gross revenues not exceeding \$40 million for the preceding three years.<sup>240</sup> These definitions were approved by the SBA.<sup>241</sup> On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.<sup>242</sup> Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.<sup>243</sup>

74. **Amateur Radio Service.** These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

75. **Aviation and Marine Services.** Small businesses in the aviation and marine radio services use a very high frequency (“VHF”) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.<sup>244</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>245</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

76. **Personal Radio Services.** Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.<sup>246</sup> These

<sup>240</sup> *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2-12.7 GHz Band*, ET Docket No. 98-206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

<sup>241</sup> See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

<sup>242</sup> See “Multichannel Video Distribution and Data Service Auction Closes,” Public Notice, 19 FCC Rcd 1834 (2004).

<sup>243</sup> See “Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,” Public Notice, 20 FCC Rcd 19807 (2005).

<sup>244</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>245</sup> *Amendment of the Commission’s Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

<sup>246</sup> 47 C.F.R. Part 90.

services include Citizen Band Radio Service (“CB”), General Mobile Radio Service (“GMRS”), Radio Control Radio Service (“R/C”), Family Radio Service (“FRS”), Wireless Medical Telemetry Service (“WMTS”), Medical Implant Communications Service (“MICS”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”).<sup>247</sup> There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.<sup>248</sup> Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

77. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>249</sup> There are a total of approximately 127,540 licensees in these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of fewer than 50,000 fall within the definition of a small entity.<sup>250</sup>

78. **Internet Service Providers.** The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are

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<sup>247</sup> The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission’s rules. *See generally* 47 C.F.R. Part 95.

<sup>248</sup> 13 C.F.R. § 121.201, NAICS Code 517210.

<sup>249</sup> With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission’s Rules, 47 C.F.R. §§ 90.15-90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (“EMRS”) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33-90.55.

<sup>250</sup> 5 U.S.C. § 601(5).

within the category of Wired Telecommunications Carriers,<sup>251</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>252</sup> The latter are within the category of All Other Telecommunications,<sup>253</sup> which has a size standard of annual receipts of \$25 million or less.<sup>254</sup> The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.<sup>255</sup> That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.<sup>256</sup> Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.<sup>257</sup> Consequently, we estimate that the majority of ISP firms are small entities.

79. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

80. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities here.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.**

81. The rules proposed herein would require certain entities or individuals to replace and/or consolidate their existing FRNs. Some additional entities and individuals would be required to report their Taxpayer Identification Number. In addition, potential CORES registrants would be required to provide a valid e-mail address as a prerequisite to completing the registration process. Also, entities claiming tax-exempt status or engaged in bankruptcy proceedings would be required to submit documentation demonstrating their tax-exempt or bankruptcy status. A substantial number of entities and individuals doing business with the Commission have already received their FRN by virtue of their prior registration in CORES, and we anticipate that the changes proposed here will have no significant economic impact on them. We have proposed to make it extremely simple, and virtually cost-free, for anyone else to obtain or revise their already-existing FRN(s). The proposals contained in this *Notice* do not include any changes in the language of FCC Forms nor would they require extra filings.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.**

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<sup>251</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>252</sup> 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

<sup>253</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>254</sup> 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>255</sup> U.S. Census Bureau, “2002 NAICS Definitions, “518111 Internet Service Providers”; <http://www.census.gov/eped/naics02/def/NDEF518.HTM>.

<sup>256</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

<sup>257</sup> An additional 45 firms had receipts of \$25 million or more.

82. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”<sup>258</sup>

83. We are attempting to reduce a possible regulatory burden by considering different methods by which we could limit individuals and entities to a single FRN, in order to improve the effectiveness and efficiency of our electronic registration system and to limit the documentation that certain entities would be required to submit to demonstrate their tax exempt or bankruptcy status. We will continue to examine alternatives in the future, with the objective of minimizing any significant impact on small entities. We seek comment on significant alternatives that commenters believe we should adopt.

**F. Federal rules that overlap, duplicate, or conflict with these proposed rules.**

84. None.

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<sup>258</sup> 5 U.S.C. § 603(c)(1)-(c)(4).